

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

BRISTOL, ss

14-P-1620

2015 SITTING

COMMONWEALTH

V.

MITCHELL VIOLET

ON APPEAL FROM A JUDGMENT OF
THE NEW BEDFORD DISTRICT COURT

COMMONWEALTH'S BRIEF
AND RECORD APPENDIX

Respectfully submitted,
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MARCH 2015

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ISSUE PRESENTED

Defendant drove his girlfriend's car to a department store. At the store, defendant was caught shoplifting. He was arrested and taken into police custody. The police did not know whether the girlfriend was available to promptly take possession of the car and the department store manager asked the police to remove it from the premises. The police did remove it, impounded it, and found a gun in the glove compartment in the course of the inventory search. Did the motion judge incorrectly suppress the firearm on the ground that the decision to impound the car was unreasonable, where the police had no obligation to contact the girlfriend and the store manager did not want the car to remain in the store lot overnight?

STATEMENT OF THE CASE¹

On March 19, 2013, complaint 1333CR1576 issued in New Bedford District Court, charging defendant, Mitchell Violet, with shoplifting by concealing merchandise, G.L. c. 266 §30A, and carrying a firearm without license, G.L. c. 269 §10(a). [RA.1]

¹ References to the Record Appendix are cited as [RA. pg].

On the same day, complaint 1333CR1572 issued in New Bedford District Court, charging co-defendant, Jemaul Oliveira, with shoplifting by concealing merchandise, G.L. c. 266 §30A, possession of a firearm without a license, G.L. c. 269 §10(h), and carrying a firearm without a license G.L. c. 269 §10(a). [RA.39]

Defendants moved to suppress the firearm seized from the glove compartment of the vehicle that Violet had operated. [RA.6,10-15] Defendants' motions were joined and hearing on the motion (J. Hand) was held on November 1, 2013. [RA.6] On November 20, 2013, an order granting the motion was entered. [RA.7,16-20]

On November 27, 2013, the Commonwealth filed its Notice of Appeal and a Motion to Enlarge Time to Apply for Leave to Proceed with Interlocutory Appeal. [RA.7] The Commonwealth's Motion to Enlarge was allowed (J. Sabra).² [RA.21-23]

² Complaints 1333CR1791 and 1333CR1792 issued in New Bedford District Court on March 20, 2013 charging Oliveira and Violet with carrying a loaded firearm without a license. [RA.40-41] The charges are connected to the same firearm that is the subject of complaints 1333CR1572 and 1333CR1576. The lower court's decision, suppressing the firearm, was entered in all four cases. But the Commonwealth did not file its notices of appeal in the latter cases [1333CR1791 and 1333CR1792] or include them in its Application for Leave to Proceed with Interlocutory Appeal. Thus,

The Commonwealth's Application for Leave to Proceed with Interlocutory Appeal was entered with the Supreme Judicial Court on December 30, 2013 and it was allowed on June 11, 2014 (Duffly, J.). [RA.36-38]

On October 23, 2014, this case was docketed with the Appeals Court.

STATEMENT OF THE FACTS

In allowing the defendant's motion to suppress, the motion judge made the following findings of facts "[b]ased on the credible evince presented at the hearing":

On Monday, March 18, 2013, at approximately 4:30 p.m., Dartmouth police officer Robert St. Denis was dispatched to the Kohl's department store in Dartmouth in response to a request from the Kohl's loss prevention department. St. Denis understood that Kohl's loss prevention agents were holding two men on suspicion of shoplifting.

Arriving at the Kohl's store at approximately the same time as another Dartmouth officer, Morency, St. Denis went to the loss prevention officer where he encountered Mitchell Violet and Jemaul Oliviera, now co-defendants. St. Denis was made aware that Violet and Oliviera had been detained by Kohl's loss prevention officers after the loss prevention officers determined that each of the co-defendants had selected items from the store, paid for some of those items, but left the store without paying for other of the items that each held. St. Denis

complaints 1333CR1791 and 1333CR1792 are not a part of this appeal.

told the defendants that the police had been called in response to the shoplifting complaint. He eventually asked the defendants how they had arrived at the Kohl's. Violet told the police that he had driven "his" car; the car was, however, registered to Violet's girlfriend. Morency asked Violet for permission to search the car for a bag of Kohl's merchandise. Violet agreed to allow the police to enter and search the car for the Kohl's merchandise; he provided the police with his car keys. The police went to the car, which was properly parked in a marked parking spot. They used the defendant's key to open it, and found the bag in plain view. The police brought the bag into the store and learned that one of the defendants had a receipt for the merchandise in that bag.

The police arrested the defendants for shoplifting and told the defendants that the car that they had arrived in would be inventoried and towed. The defendants, who had been matter-of-fact and cooperative with the police and loss prevention officers to this point, became visibly agitated. Violet told the police that he wanted his girlfriend, the registered owner of the car, to come and pick the car up; he did not want the car inventoried or towed.

The car was legally parked in a parking space in the Kohl's parking lot, well within business hours. There was no indication that the registered owner of the car was unable or unwilling to come retrieve the car. The police advised the Kohl's manager that the car might remain in the parking lot overnight; on the evidence at the hearing, this prediction was completely speculative, as no one made an effort to find out whether the owner of the car would come get it, and if so, when. The manager did not want the car to remain there and asked the police to remove it. The Dartmouth Police Department's tow policy permits the police to tow a vehicle, among other scenarios, "pursuant to a lawful arrest when the vehicle would be left unattended."

While the tow policy permits the police to forego an inventory "if the vehicle is; [l]egally parked and locked; . . . [and/or] [r]etrieved by a third party," the inventory policy does not require the police to allow an arrestee to contact a third party to arrange for private removal of the vehicle. In this instance, although Violet expressed a desire to have the owner of the car come to retrieve it, the police did not honor that request. Instead, they conducted an inventory search.

The police searched the car, adhering to the inventory policy limits. In searching the unlocked glove compartment, the police found what they believed to be a firearm, loaded and unlocked. Either while this inventory search was going on, or shortly after the inventory search was undertaken, the police pat-frisked the defendants and discovered a bullet in possession of one of them. The police were not aware that the defendants had a bullet in the possession of one or the other of them until after the suspected gun had been found in the car's glove compartment. [RA.16-18]

ARGUMENT

THE MOTION JUDGE ERRONEOUSLY CONCLUDED THAT THE DECISION TO IMPOUND THE CAR WAS UNREASONABLE.

a) Standard of Review

"In reviewing a ruling on a motion to suppress, [an appellate court] accept[s] the judge's subsidiary findings of fact absent clear error . . . [but] . . . review[s] independently the motion judge's application of constitutional principals to the facts found."

Commonwealth v. Franklin, 456 Mass. 818, 820 (2010).

b) The Decision To Impound The Car Was Reasonable Since The Registered Owner Of The Car Was Not At The Scene To Explain What She Wanted To Do With The Car And The Store Manager Did Not Want The Car To Remain On The Premises Overnight.

"Under both the Federal and Massachusetts Constitutions, analysis of the legitimacy of an inventory search of an impounded vehicle involves two related, but distinct, inquiries: (1) whether the impoundment of the vehicle leading to the search meets constitutional strictures, and (2) whether the conduct and scope of the search itself meets those strictures." *Commonwealth v. Ellerbe*, 430 Mass. 769, 772-773 (2000).

In this case, the motion judge found that the search was a "'true' inventory search, in that it was intended to secure the defendant's vehicle and its contents as the vehicle was towed and stored; it was not a pretext for an investigatory search." [RA.18]³

³ "Under both the Federal and State Constitutions inventory searches must be done in accordance with the standard police operating procedures, and under art. 14, those standard procedures must be in writing." *Commonwealth v. Eddington*, 459 Mass. 102, 108 n. 11 (2011), citing *Commonwealth v. Ellerbe*, 430 Mass. 769, 773 n.8 (2000), and case cited. But "the standard written procedure [] required for inventory searches focus[es] solely on the conduct of the search of the motor vehicle, not on whether the motor vehicle itself should be impounded and made the subject of an

Accordingly, the judge found that the question at issue was "whether the police acted constitutionally in seizing the defendant's car without providing the defendants an opportunity to make other reasonable arrangements for the car's removal from the lot: specifically, arranging for the owner of the car to come and get it." [RA.19]

In concluding that the decision to impound the car was unreasonable, and thus unconstitutional, the motion judge reasoned as follows:

In this case, there was nothing about the defendants' behavior or about the items initially found in the consent search of the vehicle that would have given rise to a suspicion that allowing the car to remain in the Kohl's lot until the owner could retrieve it would pose any risk of harm to the public. Violet's request that the car not be towed and that its owner be permitted to come get it was, at that point, reasonable. [RA.20]

But, in concluding that what the defendant asked the police to do was reasonable, the motion judge

inventory search." 459 Mass at 112, (Gants, J., concurring), citing *Commonwealth v. Daley*, 423 Mass. 747, 749-751 (1996). In any case, because the judge ruled the search of the motor vehicle to be a "'true' inventory search," and because there is no requirement that there be a standard written procedure for impoundment of automobiles, whether there was a written policy regarding the impoundment is not relevant here.

failed to consider that the registered owner of the car was not at the scene to indicate what *she* wanted to do with the car, that the police were not required to contact her, and that the store manager did not want the car to remain in the parking lot over night.

If the vehicle's owner is present and proposes an alternative disposition of the vehicle, it is appropriate to consider what the owner proposes. See *Commonwealth v. Carceres*, 413 Mass. 749, 751-752 n.2 (1992). But, if the owner is not at the scene, "the police are *not* constitutionally obligated to contact the owner" of a vehicle before towing pursuant to a lawful inventory policy. *Commonwealth v. Eddington*, 459 Mass. 102, 109-110 (2011) (emphasis added). See also, *Commonwealth v. Henley*, 63 Mass. App. Ct. 1, 6 (2005) (Police had no constitutional obligation to contact, at early morning hour, owner of vehicle, which was rental company, or authorized driver under rental agreement who was not present at stop.) Requiring the police to contact the owner of the vehicle, the Court explained in *Eddington*, would "contravene[] the proper constitutional analysis -- the touchstone of reasonableness that itself

necessitates a case-by-case analysis that takes into account the numerous and varied situations in which decisions to impound are made." *Commonwealth v. Eddington*, 459 Mass. 102, 109 n.12 (2011), citing *Coolidge v. New Hampshire*, 403 U.S. 443, 509-510 (1971).

Further, "[s]eizure is an appropriate course of action when the owner or manager of the parking facility asks that the car be removed," *Commonwealth v. Brinson*, 440 Mass. 609, 613 (2003), citing 3 LaFave, *Search and Seizure* §7.3(c), at 521 (3rd ed. 1996), and sparing the property owner "the burden of dealing with the vehicle" is a valid justification for impounding an automobile parked in a private lot. *Commonwealth v. Dunn*, 34 Mass. App. Ct. 702, 705 (1993), citing 3 LaFave, *Search and Seizure* §7.3(c), at 86-87 (2d ed. 1987).

Here, the store manager requested the car to be removed from the parking lot. [RA.17] ("The manager did not want the car to remain there and asked the police to remove it.") The police were justified in following the store manager's request that they remove the car from the store's premises, especially after its driver

was arrested for stealing from the store. *Accord.*
United States v. Kelehar, 470 F.2d 176, 178 (5th Cir.
1972) (impoundment justified where manager of Coral
Bar-B-Que asked for defendant's car to be removed from
premises after defendant was arrested for passing
counterfeit money); *Fitzgerald v. State*, 201 Ga. App.
361, 364 (1991) (impoundment of car from K-Mart proper
where manager affirmatively requested police to remove
the car from parking lot); *State v. Cabage*, 649 S.W.
2d 589 (Tenn. 1983) (impoundment of car proper where
manager of car wash requested car to be removed after
defendant was arrested for public drunkenness).

The police had advised the store manager that the
automobile "*might* remain in the parking lot over
night." [RA.17] (emphasis added) The motion judge found
that "on the evidence at hearing, this prediction was
completely speculative, as no one made an effort to
find out whether the owner of the car would come get
it, and if so, when." [RA.17] But, as explained above,
the police were not required to contact the owner.
Thus, not knowing whether the owner could take prompt
possession of the car, it was reasonable for the
police to tell the store manager that the car "*might*"

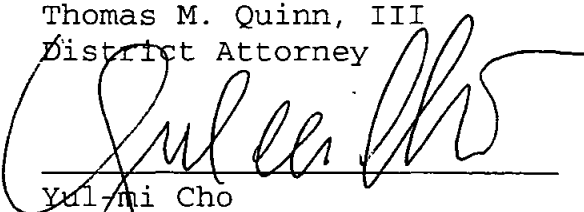
remain in the parking lot over night and,
consequently, to comply with the store manager's
request to remove the car.

The feasibility of an alternative to impounding
the car in this case would have required the police to
contact the owner, find out if she could retrieve the
car, and, if she could in fact retrieve the car, ask
the store manager whether he would permit the car to
remain in the parking lot in the meantime. It was
reasonable for the police to impound the car and
promptly return to police business.

CONCLUSION

For the foregoing reasons, the Commonwealth
respectfully asks this Court to reverse the motion
judge's order allowing the defendant's motion.

Respectfully submitted,
Thomas M. Quinn, III
District Attorney



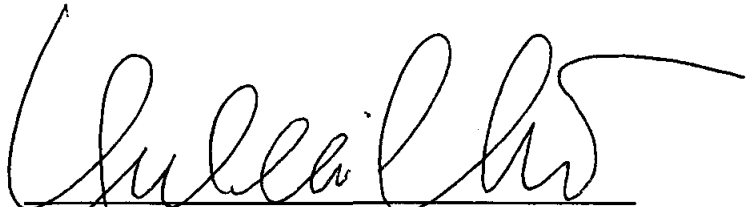
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Date: March 24, 2015

CERTIFICATION

As counsel for the Commonwealth, I certify that this brief complies with the rules of the court pertaining to the filing of briefs, including Mass. R.A.P. 16(a)(6) (pertinent findings or memorandum of decision); Mass. R.A.P. 16(e) (references to the record); Mass. R.A.P. 16(f) (reproduction of statutes, rules, regulations); Mass. R.A.P. 16(h) (length of briefs); Mass. R.A.P. 18 (appendix to the briefs); and Mass. R.A.P. 20 (form of briefs, appendices, and other papers).

COMMONWEALTH OF MASSACHUSETTS



Yul-mi Cho
Assistant District Attorney

March 24, 2015

Record Appendix

COMMONWEALTH'S RECORD APPENDIX

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CRIMINAL COMPLAINT PROSECUTOR COPY		DOCKET NUMBER 1333CR001576	NO. OF COUNTS 2	Trial Court of Massachusetts District Court Department
DEFENDANT NAME & ADDRESS Mitchell T Violet 284 England Street Apt#2 New Bedford, MA 02745				COURT NAME & ADDRESS New Bedford District Court 75 North Sixth Street New Bedford, MA 02740 (508)999-9700
DEFENDANT DOB 04/05/1988	COMPLAINT ISSUED 03/19/2013	DATE OF OFFENSE 03/18/2013	ARREST DATE 03/18/2013	
OFFENSE CITY / TOWN Dartmouth	OFFENSE ADDRESS			NEXT EVENT DATE & TIME 03/19/2013 9:00 AM
POLICE DEPARTMENT DARTMOUTH PD	POLICE INCIDENT NUMBER 13-124-AR			NEXT SCHEDULED EVENT Arraignment
OBTN TDAR201300124				ROOM / SESSION Arraignment Session
The undersigned complainant, on behalf of the Commonwealth, on oath complains that on the date(s) indicated below the defendant committed the offense(s) listed below and on any attached pages.				

COUNT	CODE	DESCRIPTION
1	266/30A/D	SHOPLIFTING BY CONCEALING MDSE c266 §30A

On 03/18/2013 did intentionally conceal merchandise offered for sale by (Kohl's), a store or other retail mercantile establishment, with the intention of depriving the merchant of the proceeds, use or benefit of such merchandise, or converting the same to the defendant's use without paying the merchant the value thereof, in violation of G.L. c.266, §30A, second par.

PENALTY: not more than \$250.

2	269/10/J	FIREARM, CARRY WITHOUT LICENSE c269 s.10(a)
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On 03/18/2013 did knowingly have in his or her possession, or under his or her control in a vehicle, a firearm, as defined in G.L. c.140, s.121, or a rifle or shotgun, not then being present in his or her residence or place of business, and not having in effect a license to carry firearms or otherwise being authorized by law to do so, in violation of G.L. c.269, s.10(a).

PENALTY: state prison not less than 2 1/2 years not more than 5 years; or jail or house of correction not less than 18 months or not more than 2 1/2 years; no continuance with a finding, filing, or suspended sentence, probation, parole, furlough, or sentence deduction until 18 months served; item to be ordered forfeited.

SIGNATURE OF COMPLAINANT X	SWORN TO BEFORE CLERK-MAGISTRATE/ASST. CLERK/DEP. ASST. CLERK X	DATE
NAME OF COMPLAINANT	A TRUE COPY ATTEST X CLERK-MAGISTRATE/ ASST. CLERK	DATE

Notice to Defendant: 42 U.S.C. § 3796gg-4(e) requires this notice: If you are convicted of a misdemeanor crime of domestic violence you may be prohibited permanently from purchasing and/or possessing a firearm and/or ammunition pursuant to 18 U.S.C. § 922 (g) (9) and other applicable related Federal, State, or local laws.

CRIMINAL DOCKET		DOCKET NUMBER 1333CR001576		NO. OF COUNTS 2		Trial Court of Massachusetts District Court Department		
DEFENDANT NAME AND ADDRESS Mitchell T Violet 284 England Street Apt#2 New Bedford, MA 02745			DOB 04/05/1988		GENDER Male		COURT NAME & ADDRESS New Bedford District Court 75 North Sixth Street New Bedford, MA 02740	
			DATE COMPLAINT ISSUED 03/19/2013					
			PRECOMPLAINT ARREST DATE 03/18/2013				INTERPRETER REQUIRED	
FIRST FIVE OFFENSE COUNTS								
COUNT	CODE	OFFENSE DESCRIPTION					OFFENSE DATE	
1	266/30A/D	SHOPLIFTING BY CONCEALING MDSE c266 §30A					03/18/2013	
2	269/10/J	FIREARM, CARRY WITHOUT LICENSE c269 s.10(a)					03/18/2013	
DEFENSE ATTORNEY <i>Atty. J. Bruman</i>			OFFENSE CITY/TOWN Dartmouth			POLICE DEPARTMENT DARTMOUTH PD		
DATE & JUDGE		DOCKET ENTRY			DATE & JUDGE		FEES IMPOSED	
<i>Supra J 3/19/13</i>		<input checked="" type="checkbox"/> Attorney appointed (SJC R. 3:10) <input type="checkbox"/> Atty denied & Defl. Advised per 211 D §2A <input type="checkbox"/> Waiver of Counsel found after colloquy Terms of release set: <input type="checkbox"/> PR <input checked="" type="checkbox"/> Bail <i>w/o</i> <input type="checkbox"/> See Docket for special condition <input type="checkbox"/> Held (276 §58A)			3/19/13		Counsel Fee (211D § 2A(2)) <input type="checkbox"/> WAIVED \$ 130	
							Counsel Contribution (211D § 2) <input type="checkbox"/> WAIVED \$	
							Default Warrant Fee (276 § 30(1)) <input type="checkbox"/> WAIVED \$	
							Default Warrant Arrest Fee (276 § 30(2)) <input type="checkbox"/> WAIVED \$	
							Probation Supervision Fee (276 § 87A) <input type="checkbox"/> WAIVED \$	
		Arraigned and advised: <i>CONDITION ON RELEASE: Persons admitted to bail who are charged with an additional crime during the period of release, may have the bail revoked in accordance with the provisions of Mass. General Law Chapter 270, Section 58.</i>					Bail Order Forfeited	
		Advised of right to jury trial <input type="checkbox"/> Does not waive						
		Advised of trial rights as pro se (Dist. Ct. Supp.R.4)						
		Advised of right of appeal to Appeals CL (M.R. Crim P.R. 28)						
SCHEDULING HISTORY								
NO.	SCHEDULED DATE	EVENT	RESULT			JUDGE	TAPE START/STOP	
1	03/19/2013	Arraignment	<input checked="" type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd			<i>Sobron</i>		
2	3/25/13	<i>denied</i>	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd			<i>Timothy</i>	6/11/08	
3	4/17/13	<i>PTH</i>	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd			<i>Timothy</i>	34/11/39	
4	5-1373	<i>PTH</i>	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd			<i>Timothy</i>	58/11/14	
5	6/21/13	<i>PTH</i>	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd			<i>Timothy</i>		
6	5/21/13	<i>PSR</i>	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd			<i>Timothy</i>		
7	9-18-13	<i>PTH (Discovery provided)</i>	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd			<i>Timothy</i>		
8	10-14-13	<i>MOT</i>	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd			<i>Timothy</i>		
9	11/1/13	<i>MOT to suppress</i>	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd			<i>Timothy</i>		
10	12/20/13	<i>status</i>	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd			<i>Timothy</i>		
APPROVED ABBREVIATIONS ARR = Arraignment PTH = Pretrial hearing DCE = Discovery compliance & jury selection BTR = Bench trial JTR = Jury trial PCH = Probable cause hearing MOT = Motion hearing GRE = Status review SRP = Status review of payments FAT = First appearance in jury session SEN = Sentencing CWF = Continuance-without-finding scheduled to terminate PRO = Probation scheduled to terminate DFTA = Defendant failed to appear & was defaulted WAR = Warrant issued WARD = Default warrant issued WR = Warrant or default warrant recalled PVH = probation revocation hearing.								
A TRUE COPY ATTEST:		CLERK-MAGISTRATE / ASST CLERK <i>X</i>				TOTAL NO. OF PAGES 1		
						ON (DATE) 3/20/13		

Date/Time Printed: 03-19-2013 08:24:12



1333CR001576

RA - 02

Asst. Clerk

CRIMINAL DOCKET - OFFENSES

DEFENDANT NAME
Mitchell T VioletDOCKET NUMBER
1333CR001576

COUNT / OFFENSE

1 SHOPLIFTING BY CONCEALING MDSE c266 §30A

DISPOSITION DATE AND JUDGE

DISPOSITION METHOD

- ☐ Guilty Plea or ☐ Admission to Sufficient Facts
accepted after colloquy and 278 §29D warning
- ☐ Bench Trial
- ☐ Jury Trial
- ☐ Dismissed upon:
- ☐ Request of Commonwealth ☐ Request of Victim
- ☐ Request of Defendant ☐ Failure to prosecute
- ☐ Other:
- ☐ Filed with Defendant's consent
- ☐ Nolle Prosequi
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT

SURFINE

COSTS

OUI §24D FEE

OUI VICTIMS ASMT

HEAD INJURY ASMT

RESTITUTION

VW ASSESSMENT

BATTERER'S FEE

OTHER

SENTENCE OR OTHER DISPOSITION

- ☐ Sufficient facts found but continued without a finding until:
- ☐ Defendant placed on probation until:
- ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by:

FINDING

- ☐ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION

- ☐ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated: defendant discharged
- ☐ Sentence or disposition revoked (see cont'd page)

JUDGE

DATE

COUNT / OFFENSE

2 FIREARM, CARRY WITHOUT LICENSE c269 s.10(a)

DISPOSITION DATE AND JUDGE

DISPOSITION METHOD

- ☐ Guilty Plea or ☐ Admission to Sufficient Facts
accepted after colloquy and 278 §29D warning
- ☐ Bench Trial
- ☐ Jury Trial
- ☐ Dismissed upon:
- ☐ Request of Commonwealth ☐ Request of Victim
- ☐ Request of Defendant ☐ Failure to prosecute
- ☐ Other:
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- ☐ Nolle Prosequi
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT

SURFINE

COSTS

OUI §24D FEE

OUI VICTIMS ASMT

HEAD INJURY ASMT

RESTITUTION

VW ASSESSMENT

BATTERER'S FEE

OTHER

SENTENCE OR OTHER DISPOSITION

- ☐ Sufficient facts found but continued without a finding until:
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- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by:

FINDING

- ☐ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION

- ☐ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated: defendant discharged
- ☐ Sentence or disposition revoked (see cont'd page)

JUDGE

DATE

COUNT / OFFENSE

DISPOSITION DATE AND JUDGE

DISPOSITION METHOD

- ☐ Guilty Plea or ☐ Admission to Sufficient Facts
accepted after colloquy and 278 §29D warning
- ☐ Bench Trial
- ☐ Jury Trial
- ☐ Dismissed upon:
- ☐ Request of Commonwealth ☐ Request of Victim
- ☐ Request of Defendant ☐ Failure to prosecute
- ☐ Other:
- ☐ Filed with Defendant's consent
- ☐ Nolle Prosequi
- ☐ Decriminalized (277 §70 C)

FINE/ASSESSMENT

SURFINE

COSTS

OUI §24D FEE

OUI VICTIMS ASMT

HEAD INJURY ASMT

RESTITUTION

VW ASSESSMENT

BATTERER'S FEE

OTHER

SENTENCE OR OTHER DISPOSITION

- ☐ Sufficient facts found but continued without a finding until:
- ☐ Defendant placed on probation until:
- ☐ Risk/Need or OUI ☐ Administrative Supervision
- ☐ Defendant placed on pretrial probation (276 §87) until:
- ☐ To be dismissed if court costs / restitution paid by:

FINDING

- ☐ Guilty ☐ Not Guilty
- ☐ Responsible ☐ Not Responsible
- ☐ Probable Cause ☐ No Probable Cause

FINAL DISPOSITION

- ☐ Dismissed on recommendation of Probation Dept.
- ☐ Probation terminated: defendant discharged
- ☐ Sentence or disposition revoked (see cont'd page)

JUDGE

DATE

eTime Printed: 03-19-2013 08:24:12



RA - 03

Asst. Clerk of Court

CRIMINAL DOCKET DOCKET ENTRIES		DEFENDANT NAME Mitchell T Violet	DOCKET NUMBER 1333CR001576
DATE	DOCKET ENTRIES		
3/19/13	<p>Motion filed by <u>Atty. S. Bannan</u> ADA <u>Nelson</u></p> <p>Comm's On. <u>Darryl Herring</u> Disc # <u>45B</u></p> <p>(276-584) - <u>allowed</u> (11:55)</p> <p>Held on \$ <u>W/P</u> cash</p> <p>Bail Judge <u>James J.</u></p>		
3/25/13	<p><u>Darryl Herring</u> - <u>Atty. S. Bannan</u>, ADA <u>Straman</u>, <u>Theresa J. J.</u> Disc # <u>61</u> 11:08</p> <p>Comm's. <u>1st. witness</u> - <u>CJC</u> - <u>Dart PD</u> (<u>Peter Carmel</u>) x by <u>def's Counsel</u> 11:31</p> <p>Comm's. <u>2nd witness</u> - <u>CJC</u> <u>Dart PD</u>. (<u>R. St. Denis</u>) 11:36</p> <p>Comm's. <u>Exhibit #1</u> - <u>Picture</u> x by <u>defense counsel</u> 11:48</p> <p><u>Def's Counsel</u> <u>1st. witness</u> - <u>Jessica Ribicki</u> 11:52 x by <u>Comm</u> 11:55</p> <p><u>Def's Counsel</u> <u>2nd witness</u> - <u>Arthur Langer</u> 11:58 x by <u>Comm</u> 11:59</p> <p>(<u>found to be a danger</u>) <u>90 days</u> <u>6-24-13</u></p> <p>Held on \$ <u>W/P</u> cash</p> <p>Bail Judge <u>James J.</u></p> <p>ON <u>4-3-4</u> BAIL REVIEW SENT TO SUPERIOR COURT FOR REVIEW <u>2nd</u> ON <u>4-3-4</u> BY <u>MA</u> <u>documented</u></p>		
4-17-13	<p>Motion for discovery filed <u>Case 2</u> (<u>Salera J.</u>)</p>		

APPROVED ABBREVIATIONS

ARR = Arraignment PTH = Pretrial hearing DCE = Discovery compliance & jury selection BTR = Bench trial JTR = Jury trial PCH = Probable cause hearing MOT = Motion hearing SRE = Status review
SRP = Status review of payments FAT = First appearance in jury session SEN = Sentencing CWF = Continuance without finding scheduled to terminate PRO = Probation scheduled to terminate
DFTA = Defendant failed to appear & was detained WAR = Warrant Issued WARD = Default warrant issued WR = Warrant or default warrant recalled PVH = Probation/vacation hearing.

Date/Time Printed: 03-19-2013 08:24:12



1333CR001576

RA - 04

Attest:

Version 2.0 - 11/06/

Asst. Clerk

DOCKET CONTINUATION		NAME OF CASE	DOCKET NUMBER
		Mitchell Violet	1333 CR001576
NO.	DATE	DOCKET ENTRIES	
4-17-13		<p>This A went for bail review @ Sup Court on 4-11-13 before J. Dupuis, and we do not have copy of J. Dupuis decision. Atty. general's Salina copy. A's bail is now</p> <p>Held on \$ <u>5,000</u> cash</p> <p>bail Judge _____</p> <p>w/condition of release of bail posted GPS, drug & alcohol free, home confinement</p>	
5/20/13		<p>Adv to 5/20/13 for habeas. return A to be released on GPS/post bail. Returnable on 5/21/13 for the Bristol House 1 Cor. JPM</p>	
5/20/13		<p>Advance for FMO on 5/21/13th Farrell mitt.</p>	
5/21/13		<p>Bail to be posted, & GPS to be placed in matter. return to 6/21/13.</p> <p style="text-align: right;">G. Neil</p>	
(m)	5-21-13	<p>Bailed \$5,000⁰⁰ Cash. Surety: Victoria Violet 284 England St. N.B.</p> <p style="text-align: right;"><i>Robert J. Thomas</i></p>	

NO.	DATE	DOCKET ENTRIES
	10/29/13	motion filed by Atty Steven Baumann - Motion to Suppress - Affidavit of defendant - Certificate of Service to be heard Nov. 1st or
11-1-13		Atty Baumann & ADA Hestrie Dusc #3 @ 11:16am (Hestrie) ★ THIS MOTION ALSO JOINED W/ 1333 CR 1572 FOR JAMAL OLIVEIRA 1ST WITNESS - OFFICER ROBERT ST DENNIS EX #1 - TOW & INVENTORY POLICY OF DART PD 2ND WITNESS MICHAEL SILVA 3RD WITNESS JASON STROBEL COMM req further date to get Add'l testimony from officer who is NOT AVAILABLE - DENIED under advisement 11/22/13 See #3 (motion) (Hestrie) held.
(mc)	11-8-13	Motion filed by Atty Steven Baumann to be heard on 11-22-13 - Post Hearing Memorandum in Support of Motion to Suppress - Certificate of Service.

DOCKET CONTINUATION		NAME OF CASE	DOCKET NUMBER
		Mitchell Violet	1333CR0015710
NO.	DATE	DOCKET ENTRIES	
	11-20-13	Decision ^{on} Defendant's motion to suppress evidence, received from Judge Hand. - After review motion is allowed notified DA & Atty. Bausman	
	11/22/13	Coral motion to reduce bail by Atty. S. Bausman 59 / 11/11 ADA Hendrie no action @ this time to be addressed on 12/20/13. Macy.g.	
	11/27/13	Motion Filed by the Commonwealth - Commonwealth Notice of Appeal - Motion To Enlarge Time To Apply For Leave To Proceed With Interlocutory Appeal Affidavit	
		all I extend time to 12/31/13 (Saturday)	
	12/20/13	Cont to 1/10/14 (Court set)	
	CR 3		
	Kirkman	Doc # 57/1122	
	12/20/13	Defendant request to be removed from GPS - per Macy.g. Defendant removed from GPS other conditions of release remain in place.	
	1-10-14	CR00 CND CD 27 9:03 CT3	
	3-14-14	SRE CT3	

NO.	DATE	DOCKET ENTRIES
	2-14-14	Motion filed by Atty Steven Bousman - Motion to Appoint Appellate Counsel - Air of course 2-14-14 - allowed Mary J
	2-21-14	Allowed motion for App. Counsel sent to Dorothy Melle
	3/14/14	Cont. 6/20/14 status cr #3 - Matthew J Doc #39/9:17
	6-16-14	Rec'd Notice of Docket Entry & Order from Supreme Ct.
	6-20-14	MOT To Appoint Appellate Counsel F.L.J + Alloc-? also cont CD 59 9:00 cr 3 J. MARY
	9-12-14	SRE cr 3
	6-20-14	Allowed motion To Appoint Appellate Counsel sent to Dorothy Melle
	7/1/14	Motion filed by Atty Steven Bousman a Motion for reduction of Bail - - allowed Mary J
	7/9/14	Defendant's Bail Released to Personal Recognizance BAIL REFUNDED OK # 11643 AMT \$5000.00 DATE: 7/10/14 TO: Victoria Violet

COMMONWEALTH OF MASSACHUSETTS**BRISTOL, SS.****DISTRICT COURT DEPARTMENT
NEW BEDFORD DIVISION
DOCKET NO. 1333 CR 1576****COMMONWEALTH****V.****MITCHELL VIOLET****MOTION TO SUPPRESS EVIDENCE
SEIZED WITHOUT A WARRANT**

The defendant moves, pursuant to the Fourth, Fifth and Fourteenth Amendments to the United States Constitution, Articles Ten, Twelve and Fourteen of the Massachusetts Declaration of Rights, G.L.c. 276, § 1, to suppress any and all evidence seized from the defendant's motor vehicle on or about March 18, 2013, including but not limited to a (firearm), as a result of a warrantless search and seizure of the Defendant and his motor vehicle, conducted by members of the Town of Dartmouth Police Department.

The defendant further moves to suppress any statements made to the police. As reasons therefore, the police obtained the statements from the defendant in violation of *Miranda v. Arizona*, 384 U.S. 436, 10 Ohio Misc. 9 86 S. Ct. 1602, 16 L.Ed2d 694 (1966) the Fifth, Sixth and Fourteenth Amendments to the United States Constitution, and Article 12 of the Massachusetts Declaration of Rights; as well as the "fruit of the poisonous tree" doctrine. See *Wong Sun v. United States*, 371 U.S. 471 (1963).

The grounds for this motion are that the seizure was the product of an illegal search and seizure and that the police were not acting upon a valid and lawful inventory exception.

The search and seizure were illegal because:

1. There was no probable cause for the search of the motor vehicle.
2. There was not a search warrant for the search of the motor vehicle.
3. The defendant did not consent to the search.
4. The defendant did not make any voluntarily statements to the police.

5. There were no exigent circumstances which would authorize a warrantless search.
6. The defendant was subject to a custodial interrogation without the benefit of Miranda.
7. The search of the defendant's motor vehicle was pretextual in nature.

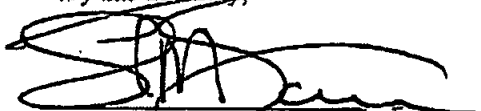
As further reasons therefore, the evidence was not seized pursuant to a lawful "stop and frisk", not pursuant to a well being check, not in conformity with a valid inventory procedure, not pursuant to a dire emergency, not pursuant to a accomplice sweep.

A lawful inventory search is contingent on the propriety of the impoundment of the car. *Commonwealth v. Brinson*, 440 Mass. 609, 62, 800 N.E.2d 1032 (2003), citing *Commonwealth v. Garcia*, 409 Mass. 675, 678, 569 N.E. 2d 385 (1991). A car lawfully parked in a privately owned commercial establishment's parking lot cannot be impounded unless there is evidence that the car presented a hazard or was likely to be stolen or vandalized, *Brinson*, 440 Mass. at 617.

The defendant further refers to his Affidavit in Support of Motion to Suppress.

The defendant requests an evidentiary hearing on this motion.

Respectfully submitted,
Mitchell Violet
By his attorney,



Steven M. Bausman
BBO No. 633606
45 North Main St. 5th Fl.
Fall River, MA 02720
508. 679. 0004

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS.

NEW BEDFORD DISTRICT COURT
CRIMINAL DIVISION
DOCKET NO. 1333 CR 1576

COMMONWEALTH OF MASSACHUSETTS

V.

MITCHELL VIOLET

DEFENDANT'S AFFIDAVIT IN SUPPORT OF MOTION TO SUPPRESS

I, Mitchell Violet, state the following to be true and accurate to the best of my knowledge and belief;

1. I am the defendant in the above entitled action.
2. On March 18, 2013, I was detained by Kohl's Department Store Security for shoplifting.
3. The Dartmouth Police arrived, and took the keys to the motor vehicle I arrived in, without my permission.
4. The Police informed me they were going to tow the motor vehicle over my objection.
5. I did not consent to the officers searching me.
6. I did not consent to the officers searching the motor vehicle.
7. I did not make any voluntarily statements to the officers.

This affidavit does not include all the facts and circumstances known to the Affiant about this event. It was prepared solely for the purpose of litigating the accompanying Motion to Suppress.

Signed under the pains and penalties of perjury this 11th Day of October, 2013.



Mitchell Violet

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS.

DISTRICT COURT DEPARTMENT
NEW BEDFORD DIVISION
DOCKET NO. 1333 CR 1576

COMMONWEALTH

V.

MITCHELL VIOLET

POST HEARING MEMORANDUM
IN SUPPORT OF
MOTION TO SUPPRESS

I. STATEMENT OF FACTS

On March 18, 2013 at approximately 4:00pm in the afternoon after the defendants had exited Kohl's Department Store in Dartmouth, they were identified as shoplifters by a Loss Prevention Specialist and asked to return to the security office. The defendants agreed, and did so. They had taken cologne and clothes from the store without payment. Four Dartmouth Police Officers responded to the report of two male shoplifters. While in the security office, defendant Violet agreed to the Officer's request to retrieve the Kohl's merchandise that was placed in the auto, which was in plain view on the back seat of the auto. That merchandise was matched up to the receipt in the defendant's pocket showing its proper purchase. The Police then place the defendants under arrest and advise the defendants that the auto will be inventoried and towed. Violet requests that the registered owner of the auto be allowed to come pick it up. The police deny the defendant's request, but do run the license plates to identify the registered owner of the auto. During the inventory search of the auto a 9mm hand gun is discovered in the glove box, which officer St. Dennis believes was unlocked at the time. A 9 mm bullet is also discovered in the pants pocket of co-defendant Oliveira. The defendants are booked at the station and both provide recorded statements to the police, denying knowledge of the handgun.

II. ARGUMENT

"[T]he propriety of the impoundment of the vehicle is a threshold issue in determining the lawfulness of the inventory search." *Commonwealth v. Garcia*, 409 Mass. 675, 678, 569 N.E.2d 385 (1991).

The Court in *Garcia* recognized three separate interests which are protected by permitting police to conduct warrantless inventory searches; the protection of the vehicle and its contents; the protection of the police and the tow company from false charges; and the protection of the public from dangerous items which might be in the vehicle. In order

for the auto to be towed for a dangerous item, the police would have needed to have been properly in the auto at the time of discovery, or the firearm would have needed to be in plain view as the Kohl's shopping bag was.

Under The Dartmouth Police Motor Vehicle Tow and Inventory Policy, Causes for Removal; it states "Pursuant to a lawful arrest when the vehicle would be left unattended". The relevant law is G.L. c. 276, § 1, second paragraph. "A search conducted incident to an arrest may be made only for the purposes of seizing fruits, instrumentalities, contraband and other evidence of the crime for which the arrest has been made, in order to prevent its destruction or concealment; and removing any weapons that the arrestee might use to resist or effect escape. Property seized as a result of a search in violation of the provisions of this paragraph shall not be admissible in evidence in criminal proceedings".

Commonwealth v. Brinson, 440 Mass. 609, 800 N.E.2d 1032 (2003) squarely addressed the issue where the auto is already parked in a lot after arresting the defendant in the vicinity of the car. "Seizure is an appropriate course when the owner or manager of the parking facility asks that the car be removed, but otherwise is inappropriate, at least when the offense for which the arrest is made is so minor that the defendant's prompt release can be anticipated." 3 W.R. LaFave, Search and Seizure § 7.3 (c), at 521 (3rd ed. 1996). Courts have upheld the impoundment of a car from the lot associated with the arrest location when accompanied by such circumstances as threats of vandalism. Parking restrictions, police liability concerns, or the inability of the defendant or another later to move the car. See United States v. Martin, 982 F. 2d 1236, 1240 (8th Cir, 1993).

Absent those circumstances, impoundment of a car in the parking lot associated with the building in which the driver was arrested has been held to be unlawful. See State v. Bertram, 18 Ariz. App. 579, 582 (1972) (police may not tow and inventory car safely parked in commercial lot in proximity of arrest); Weed v. Wainwright, 3252 So.2d 44, 45(Fla. Dist. Ct. App. 1975) (car left unattended after arrest insufficient reason to justify search). Here as well as the cited cases this was a commercial lot open to the public without limitation. There were no parking limitations, there were no civil or criminal motor vehicle violations, the officer's testimony indicated the auto was relatively empty, and the time of day was in the afternoon. Thus, there were no associated factors with the auto itself to give justification to the tow. The defendant requested the registered owner be able to pick up the car, and the defendant's prompt release could easily be anticipated for his shoplifting arrest.

The Kohl's Lost Prevention Specialist and the Store Manager both gave credible testimony that the Dartmouth Police indicated to them that they had found a gun in the auto and would they like it towed. Not the other way around as indicated in the report that the Police sought their consent for removal then conducted a proper inventory of the auto. Those two witnesses are commonly associated with testimony that supplements factors and elements of the Commonwealth's case and their testimony should be given strong weight in the decision to suppress evidence.

Office St. Dennis testified that he learned of the bullet found in co-defendant Oliveira's pocket after he had found the firearm in the glove compartment of the auto. However, even if the Police had found the bullet first, it would not establish independent probable cause for any justification to search the auto.

III. SUMMARY

The defendant was arrested for shoplifting; he drove an auto to the store he took merchandise from. The Dartmouth police conducted an investigative search of that auto and called it a proper inventory procedure. No independent factors were brought out during testimony that would support the justification of the Police to be lawfully in the auto at the time the firearm was located in the glove compartment.

The defendant respectfully requests this Honorable Court to allow his motion and to suppress the seized evidence as well as any statements following the arrest.

Mitchell Violet
By his attorney

A handwritten signature in black ink, appearing to read 'S. Bausman', with a long horizontal flourish extending to the right.

Steven M. Bausman
45 North Main Street 5th Fl.
Fall River, MA 02720
508 679-0004
BBo # 633606

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

NEW BEDFORD DISTRICT COURT
DOCKET NO. 1333CR1576

COMMONWEALTH

v.

MITCHELL VIOLET.

MEMORANDUM OF DECISION
ON DEFENDANT'S MOTION TO SUPPRESS EVIDENCE

This matter came before me on November 1, 2013 for hearing on the defendant's motion to suppress evidence obtained during, or as the result of, a search of a car. For the reasons below, the motion to suppress is ALLOWED.

Based on the credible evidence presented at the hearing, I find the following facts. On Monday, March 18, 2013, at approximately 4:30 p.m., Dartmouth police officer Robert St. Denis was dispatched to the Kohl's department store in Dartmouth in response to a request from the Kohl's loss prevention department. St. Denis understood that Kohl's loss prevention agents were holding two men on suspicion of shoplifting.

Arriving at the Kohl's store at approximately the same time as another Dartmouth officer, Morency, St. Denis went to the loss prevention office where he encountered Mitchell Violet and Jemaul Oliviera, now co-defendants. St. Denis was made aware that Violet and Oliviera had been detained by Kohl's loss prevention officers after the loss prevention officers determined that each of the co-defendants had selected items from the store, paid for some of those items, but left the store without paying for other of the items that each held. St. Denis

Commonwealth v. Mitchell Violet, Docket No. 1333CR1576

told the defendants that the police had been called in response to the shoplifting complaint. He eventually asked the defendants how they had arrived at the Kohl's. Violet told the police that he had driven "his" car; the car was, however, registered to Violet's girlfriend. Morency asked Violet for permission to search the car for a bag of Kohl's merchandise. Violet agreed to allow the police to enter and search the car for the Kohl's merchandise; he provided the police with his car keys. The police went to the car, which was properly parked in a marked parking spot. They used the defendant's key to open it, and found the bag in plain view. The police brought the bag into the store and learned that one of the defendants had a receipt for the merchandise in that bag.

The police arrested the defendants for shoplifting and told the defendants that the car that they had arrived in would be inventoried and towed. The defendants, who had been matter-of-fact and cooperative with the police and loss prevention officers to this point, became visibly agitated. Violet told the police that he wanted his girlfriend, the registered owner of the car, to come and pick the car up; he did not want the car inventoried or towed. The car was legally parked in a parking space in the Kohl's parking lot, well within business hours. There was no indication that the registered owner of the car was unable or unwilling to come retrieve the car. The police advised the Kohl's manager that the car might remain in the parking lot overnight; on the evidence at the hearing, this prediction was completely speculative, as no one made an effort to find out whether the owner of the car would come get it, and if so, when. The manager did not want the car to remain there and asked the police to remove it. The Dartmouth Police Department's tow policy permits the police to tow a vehicle,

Commonwealth v. Mitchell Violet, Docket No. 1333CR1576

among other scenarios, "[p]ursuant to a lawful arrest when the vehicle would be left unattended." While the tow policy permits the police to forego an inventory "if the vehicle is; [i]legally parked and locked; . . . [and/or] [r]emoved by a third party," the inventory policy does not require the police to allow an arrestee to contact a third party to arrange for private removal of the vehicle. In this instance, although Violet expressed a desire to have the owner of the car come to retrieve it, the police did not honor that request. Instead, they conducted an inventory search.

The police searched the car, adhering to the inventory policy limits. In searching the unlocked glove compartment, the police found what they believed to be a firearm, loaded and unlocked.¹ Either while this inventory search was going on, or shortly after the inventory search was undertaken, the police pat-frisked the defendants and discovered a bullet in the possession of one of them. The police were not aware that the defendants had a bullet in the possession of one or the other of them until after the suspected gun had been found in the car's glove compartment.

The search here was a "true" inventory search, in that it was intended to secure the defendant's vehicle and its contents as the vehicle was towed and stored; it was not a pretext for an investigatory search.

"A lawful inventory search is contingent on the propriety of the impoundment of the car." *Commonwealth v. Brinson*, 440 Mass. 609, 612, 800 N.E.2d 1032 (2003). "'Under both the Federal and Massachusetts Constitutions, analysis of the legitimacy of an inventory search of an impounded vehicle involves two related, but distinct, inquiries: (1) whether the impoundment of the vehicle

¹ The Commonwealth did not introduce a copy of the inventory sheet at the hearing.

leading to the search meet[s] constitutional strictures, and (2) whether the conduct and scope of the search itself meet those strictures.” *Commonwealth v. Henley*, 63 Mass.App.Ct. 1, 5, 822 N.E.2d 313 (2005), quoting *Commonwealth v. Ellerbe*, 430 Mass. 769, 772-773, 723 N.E.2d 977 (2000).

Commonwealth v. Trinidad-Franco, 2007 Mass. Super. LEXIS 565 (Mass. Super. Ct. Dec. 12, 2007).

The question at issue here is whether the police acted constitutionally in seizing the defendant’s car without providing the defendants an opportunity to make other reasonable arrangements for the car’s removal from the lot: specifically, arranging for the owner of the car to come and get it. The answer is case-specific: our courts have not recognized a “general” obligation on the police to explore an arrestee’s ability to make private arrangements for removal of a vehicle otherwise subject to a written inventory tow policy. *See, e.g., Commonwealth v. Caceres*, 413 Mass. 749, 751-752 (1992). Rather, the Supreme Judicial Court has said,

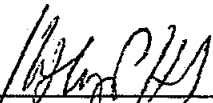
“[i]n our view, adopting any per se rule whether such a rule applies to an owner or a driver contravenes the proper constitutional analysis – the touchstone of reasonableness that itself necessitates a case-by-case analysis that takes into account the numerous and varied situations in which decisions to impound are made. *See Coolidge v. New Hampshire*, 403 U.S. 443, 509-510, 91 S. Ct. 2022, 29 L. Ed. 2d 564 (1971) (Black, J., concurring and dissenting) (“The relevant test [whether the Fourth Amendment has been violated] is not the reasonableness of the opportunity to procure a warrant, but the reasonableness of the seizure under all the circumstances. The test of reasonableness cannot be fixed by per se rules; each case must be decided on its own facts”). *See also Landry v. Attorney Gen.*, 429 Mass. 336, 348, 709 N.E.2d 1085 (1999), and cases cited (Fourth Amendment violations occur only if search or seizure is unreasonable).”

Commonwealth v. Eddington, 459 Mass. 102, 111 (2011).

Commonwealth v. Mitchell Violet, Docket No. 1333CR1576

In this case, there was nothing about the defendants' behavior or about the items initially found in the consent search of the vehicle that would have given rise to a suspicion that allowing the car to remain in the Kohl's lot until the owner could retrieve it would pose any risk of harm to the public. Violet's request that the car not be towed and that its owner be permitted to come get it was, at that point, reasonable. While the search of the car was within the boundaries of the inventory search policy, the seizure of the car was not reasonable. The motion to suppress is ALLOWED.

DATED: November 19, 2013



Kathryn E. Hand

Commonwealth v. Mitchell Violet, Docket No. 1333CR1576

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS.

DISTRICT COURT DEPARTMENT
No. 1333CR1576

COMMONWEALTH

)

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V.

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COMMONWEALTH'S NOTICE OF

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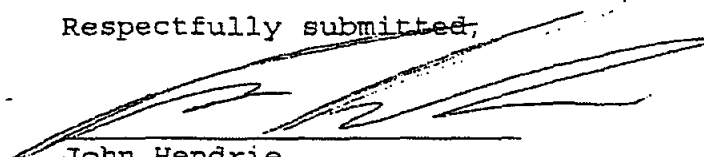
APPEAL

MITCHELL VIOLET

)

The Commonwealth hereby files its Notice of
Appeal from the November 19, 2013 Order of the
District Court (Hand, K.) allowing the defendant's
Motion to Suppress.

Respectfully submitted,



John Hendrie
Assistant District Attorney
Bristol District
BBO # 675430
P.O. Box 973
888 Purchase Street
New Bedford, MA 02741
(508) 997-0711

November 26, 2013

26

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS.

DISTRICT COURT
No. 1333CR1576

COMMONWEALTH

V.

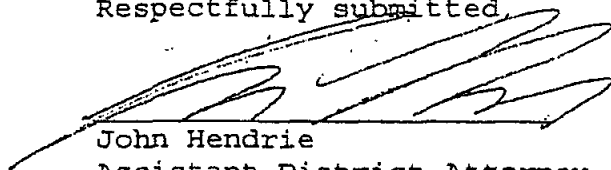
MITCHELL VIOLET

)
)
) COMMONWEALTH'S MOTION TO
) ENLARGE TIME TO APPLY
) FOR LEAVE TO PROCEED WITH
) INTERLOCUTORY APPEAL

Allowed
Submitted
11-27-13

Pursuant to Mass. R. Crim. P. 15(b)(1) and
Supreme Judicial Court Standing Order: Applications to
a Single Justice Pursuant to Mass. R. Crim. P.
15(a)(2) (adopted February 1, 1997), the Commonwealth
respectfully requests this Court to enlarge to
December 31, 2013 the time for the Commonwealth to
apply for leave to appeal from the allowance of the
defendant's Motion to Suppress. Additional time is
necessary to prepare the application, as explained in
more detail in the attached affidavit.

Respectfully submitted,



John Hendrie
Assistant District Attorney
Bristol District
BBO # 675430
P.O. Box 973
888 Purchase Street
New Bedford, MA 02741
(508) 997-0711

Date: November 25, 2013

10/15/2014 11:24

#325 P.004/006

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS.

DISTRICT COURT DEPARTMENT
No. 1333CR1576

COMMONWEALTH

V.

MITCHELL VIOLET

AFFIDAVIT IN SUPPORT OF COMMONWEALTH'S MOTION TO
ENLARGE TIME TO APPLY FOR LEAVE TO PROCEED WITH
INTERLOCUTORY APPEAL

I do hereby state as follows:

1. I am an Assistant District Attorney assigned to the district court division of the Office of the District Attorney for the Bristol District;
2. On November 19, 2013, the District Court (Hand, K.) entered an order allowing the defendant's motion to suppress;
3. I have reviewed the judge's decision, as well as other relevant documents, and believe that there may be a basis to pursue an interlocutory appeal. I have spoken to the Chief of Appeals, David Mark, about this case. A final determination as to whether to pursue this matter further will be made after reviewing the audio recordings made of the suppression hearing and after consulting with First Assistant Tom Quinn. I anticipate that a final decision as to whether to pursue this matter further will be made within the next two weeks.
4. By Supreme Judicial Court Standing Orders (Applications to a Single justice Pursuant to Mass R. Crim. P. 15(a)(2)), the Commonwealth must files its application "within seven days of the issuance of notice of the order being appealed, or such additional time as either the trial judge or the single justice of the Supreme judicial Court shall order"

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPREME JUDICIAL COURT
SINGLE JUSTICE SESSION
NO. _____

NEW BEDFORD DISTRICT COURT
NOS. 1333CR1576
1333CR1572

COMMONWEALTH

v.

MITCHELL VIOLET and JEMAU OLIVEIRA

COMMONWEALTH'S APPLICATION FOR LEAVE TO
PROCEED WITH INTERLOCUTORY APPEAL

Pursuant to Mass. R. Crim. P. 15(a)(2) and the Supreme Judicial Court standing order of February 1, 1997, the Commonwealth respectfully applies to this Honorable Court for leave to file an interlocutory appeal from the findings and rulings of Hand, J., sitting in New Bedford District Court, on the above cases, docket numbers 1333CR1576 and 1333CR1572, allowing the defendants' Motions to Suppress. The Commonwealth further argues that it would be appropriate for the Single Justice to retain jurisdiction over this case and decide the matter on its merits. See Mass. R. Crim. P. 15(a)(2) ("If the single justice determines that the administration of justice would be facilitated, the justice may grant that leave and may hear the appeal or

may report it to the full Supreme Judicial Court or to the Appeals Court.") (emphasis added). In support of this application, the Commonwealth says the following:

1. On March 18, 2013, at approximately 4:30P.M., Dartmouth Police officers responded to Kohl's department store in Dartmouth for a report of shoplifting. Officer St. Dennis learned that co-defendants Mitchell Violet and Jemaul Oliveira were observed leaving the store without paying for certain items. Both men were arrested. [CRA.18-20].¹

2. In speaking with Violet and Olivera, Officer St. Dennis learned that they arrived at the store in a vehicle registered to Violet's girlfriend. The girlfriend's vehicle was legally parked in the store's parking lot. The manager of the store told officers that he did not want the car to remain in the parking lot. Accordingly, officers had the vehicle inventoried and towed. The police did so despite Violet's stated preference that his girlfriend, the registered owner of the car, be allowed to come and pick it up. [CRA.18-20].

¹ References to the record will be cited as [CRA.(page #)].

3. In the process of searching the vehicle pursuant to the Dartmouth Police Department's tow policy, the police opened the glove box and discovered a loaded firearm. [CRA.20].

4. On March 19, 2013, a two count complaint issued against Violet, charging him with carrying a firearm without a license and shoplifting. On the same day, a three count complaint issued against Oliveira, charging him with carrying a firearm without a license, possession of ammunition without a license, and shoplifting. [CRA.1-2].

5. The defendants each filed motions to suppress, arguing that the search of the vehicle was not constitutionally justified. Both motions were joined together for consideration and, on November 20, 2013, Judge Hand allowed the motions to suppress in a written memorandum of decision. [CRA.7-8,14-15].²

6. Another justice of the New Bedford District Court, Sabra, J., has granted the Commonwealth an

² In the case caption of Judge Hand's decision, she only included Violet's name and the docket number associated with his case and made no mention of Oliveria's case. But it is clear from reviewing the decision, and from the docket sheets associated with both cases, that Judge Hand's decision applied to both defendants. Accordingly, the Commonwealth filed a notice of appeal in both cases.

extension until December 31, 2013 to file its application for leave to appeal. The Commonwealth filed its notices of appeal on November 27, 2013. [CRA.8,15].

7. This matter is next scheduled for a January 10, 2014 status hearing.

8. The Commonwealth expects that a trial would last approximately 1-2 days.

9. It is the Commonwealth's contention that Judge Hand's allowance of the defendants' motions to suppress is erroneous. This contention is developed in detail in the Commonwealth's Memorandum of Law in support of this application.

10. As the motion judge has suppressed all evidence obtained from the search of the vehicle, the Commonwealth has no other evidence of the defendants' guilt on the firearm charges (the less serious counts of shoplifting remain unaffected by the judge's decision). Where the motion judge's order of suppression is premised on a misunderstanding of the law, the Commonwealth should be permitted to seek reversal of that order, so that it may present at the defendant's trial in this very serious case evidence of the defendant's guilt.

Respectfully submitted,
FOR THE COMMONWEALTH

David J. Gold
Assistant District Attorney
Bristol District
BBO# 667611
888 Purchase Street
New Bedford, MA 02741
(508) 997-0711

Dated: March 20, 2015

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

**SUPREME JUDICIAL COURT
SINGLE JUSTICE SESSION
NO. _____**

**NEW BEDFORD DISTRICT COURT
NOS. 1333CR1576
1333CR1572**

COMMONWEALTH

v.

MITCHELL VIOLET and JEMAUOL OLIVEIRA

**MEMORANDUM OF LAW IN SUPPORT OF COMMONWEALTH'S
APPLICATION FOR LEAVE TO PROCEED WITH
INTERLOCUTORY APPEAL**

I. STATEMENT OF FACTS

In allowing the defendant's motion to suppress, the motion judge made the following findings of facts "[b]ased on the credible evince presented at the hearing":

On Monday, March 18, 2013, at approximately 4:30 p.m., Dartmouth police officer Robert St. Denis was dispatched to the Kohl's department store in Dartmouth in response to a request from the Kohl's loss prevention department. St. Denis understood that Kohl's loss prevention agents were holding two men on suspicion of shoplifting.

Arriving at the Kohl's store at approximately the same time as another Dartmouth officer, Morency, St. Denis went to the loss prevention officer where he encountered Mitchell Violet and Jemaul Oliviera, now co-defendants. St. Denis was made aware that Violet and Oliviera had been detained by Kohl's loss prevention officers after the loss prevention officers determined that each of the co-defendants had selected

items from the store, paid for some of those items, but left the store without paying for other of the items that each held. St. Denis told the defendant that the police had been called in response to the shoplifting complaint. He eventually asked the defendants how they had arrived at the Kohl's. Violet told the police that he had driven "his" car; the car was, however, registered to Violet's girlfriend. Morency asked Violet for permission to search the car for a bag of Kohl's merchandise. Violet agreed to allow the police to enter and search the car for the Kohl's merchandise; he provided the police with his car keys. The police went to the car, which was properly parked in a marked parking spot. They used the defendant's key to open it, and found the bag in plain view. The police brought the bag into the store and learned that one of the defendants had a receipt for the merchandise in that bag.

The police arrested the defendant for shoplifting and told the defendants that the car that they had arrived in would be inventoried and towed. The defendants, who had been matter-of-fact and cooperative with the police and loss prevention officers to this point, became visibly agitated. Violet told the police that he wanted his girlfriend, the registered owner of the car, to come and pick the car up; he did not want the car inventoried or towed. The car was legally parked in a parking space in the Kohl's parking lot, well within business hours. There was no indication that the registered owner of the car was unable or unwilling to come retrieve the car. The police advised the Kohl's manager that the car might remain in the parking lot overnight; on the evidence at the hearing, this prediction was completely speculative, as no one made an effort to find out whether the owner of the car would come get it, and if so, when. The manager did not want the car to remain there and asked the police to remove it. The Dartmouth Police Department's tow policy permits the police to tow a vehicle, among other scenarios, "pursuant to a lawful arrest when the vehicle would be left unattended." While the tow policy permits the police to forego an inventory "if the vehicle is; [l]egally parked and locked; . . . [and/or] [r]etrieved by a third party," the inventory policy does not require the police to allow an arrestee to contact a third party to arrange for private removal of the vehicle.

In this instance, although Violet expressed a desire to have the owner of the car come to retrieve it, the police did not honor that request. Instead, they conducted an inventory search.

The police searched the car, adhering to the inventory policy limits. In searching the unlocked glove compartment, the police found what they believed to be a firearm, loaded and unlocked. Either while this inventory search was going on, or shortly after the inventory search was undertaken, the police pat-frisked the defendant and discovered a bullet in possession of one of them. The police were not aware that the defendant had a bullet in the possession of one or the other of them until after the suspected gun had been found in the car's glove compartment.

[CRA.18-20].

ARGUMENT

THE MOTION JUDGE ERRED IN ALLOWING THE DEFENDANT'S MOTION TO SUPPRESS: IT IS WELL SETTLED THAT THE POLICE ARE NOT OBLIGATED TO CONTACT THE OWNER OF A VEHICLE BEFORE TOWING IT PURSUANT TO A LAWFUL INVENTORY POLICY.

"In reviewing a ruling on a motion to suppress, [an appellate court] accept[s] the judge's subsidiary findings of fact absent clear error . . . [but] . . . review[s] independently the motion judge's application of constitutional principals to the facts found."

Commonwealth v. Franklin, 456 Mass. 818, 820 (2010).

Here, the motion judge found that "[t]he search here was a 'true' inventory search, in that it was intended to secure the defendant's vehicle and its contents as the vehicle was towed and stored; it was not a pretext for an investigatory search." [CRA.20].

According to the motion judge "[t]he question at issue here is whether the police acted constitutionally in seizing the defendant's car without providing the defendants an opportunity to make other reasonable arrangements of the car's removal from the lot: specifically, arranging for the owner of the car to come and get it." [CRA.21]; see also *Commonwealth v. Garcia*, 409 Mass. 675, 678 (1991) (concerning inventory search, "the propriety of the impoundment of the vehicle is a threshold issue in determining the lawfulness of the inventory search"). In concluding that the seizure and search of the vehicle was unreasonable, and thus unconstitutional, the motion judge reasoned as follows:

In this case, there was nothing about the defendant's behavior or about the items initially found in the consent search of the vehicle that would have given rise to a suspicion that allowing the car to remain in the Kohl's lot until the owner could retrieve it would pose any risk of harm to the public. Violet's request that the car not be towed and that its owner be permitted to come get it was, at that point, reasonable. While the search of the car was within the boundaries of the inventory search policy, the seizure of the car was not reasonable.

[CRA.22].

But as the motion judge herself recognized, "court have not recognized a 'general' obligation to

the police to explain an arrestee's ability to make private arrangements for removal of a vehicle otherwise subject to a written inventory tow policy." [CRA.21]. Indeed, in *Commonwealth v. Eddington*, 459 Mass. 102, (2011), the Supreme Judicial Court expressly held that the police are *not* obligated to contact the owner of a vehicle before towing it pursuant to a lawful inventory policy. In *Eddington*, the defendant was arrested after a motor vehicle stop. At the time, the vehicle was lawfully parked on the side of the road. The vehicle that the defendant had been using did not belong to him and rather than calling the owner of the vehicle to come retrieve it, the police decided to inventory and tow the vehicle. *Id.* at 105-106. During the inventory, officers found a firearm and ammunition. *Id.* at 106. A district court judge allowed the defendant's motion to suppress, reasoning that "[b]ecause the automobile was lawfully parked impoundment could only be justified if there was a risk of theft or threat of vandalism, which the judge determined that the Commonwealth did not show." *Id.* In reversing the district court judge's conclusion, the SJC held, in part as follows:

[T]he owner of the automobile, Rodriguez, was not present at the scene to express a preference on the vehicle's disposition. In accordance with our past precedent, the police were not constitutionally obligated to contact her.

Id.; see also *Commonwealth v. Ellerbe*, 430 Mass. 769, 776 (2000) ("Reasonableness did not require police officers to guard the vehicle or to wait with the unlicensed passenger until a licensed driver could be produced to take control of it."); *Commonwealth v. Henley*, 63 Mass. App. Ct. 1, 6 (2005) (police had no constitutional obligation to contact, in early morning hour, owner of vehicle, which was rental company, or authorized driver under rental agreement who was not present at stop).

The motion judge cites to *Eddington* in her decision but nonetheless concludes that "Violet's request that the car not be towed and the owner be permitted to come get it was, at that point, reasonable." [CRA.22]. But *Eddington* makes clear that Violet's preference for the manner in which the car was removed from the parking lot is beside the point. The manager of the store wanted the vehicle out of the parking lot, the owner of the vehicle was not present at the time of the defendants were arrested, and the police had no constitutional obligation to contact her

(or allow the defendants to do so) prior to towing the vehicle. The police acted properly in seizing and searching the vehicle.

CONCLUSION

For the foregoing reasons, this Court should allow the Commonwealth's Application for Leave to Proceed with Interlocutory Appeal and decide the matter on its merits.

Respectfully submitted,

C. SAMUEL SUTTER
District Attorney

David J. Gold
Assistant District Attorney
Bristol District
BBO # 667611
P.O. Box 973
888 Purchase Street
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(508) 997-0711
David.j.gold@state.ma.us

Dated: December 27, 2013



The Commonwealth of Massachusetts
SUPREME JUDICIAL COURT

FOR SUFFOLK COUNTY

JOHN ADAMS COURTHOUSE

ONE PEMBERTON SQUARE, SUITE 1300

BOSTON, MASSACHUSETTS 02108-1707

WWW.SJCCOUNTYCLERK.COM

MAURA S. DOYLE
CLERK

CASE INFORMATION (617) 557-1100

FACSIMILE (617) 557-1117

ATTORNEY SERVICES (617) 557-1050

FACSIMILE (617) 557-1055

June 11, 2014

David B. Mark, Assistant District Attorney
Office of the District Attorney/Bristol
888 Purchase Street
New Bedford, MA 02740

RE: No. SJ-2013-0501

COMMONWEALTH

vs.

MITCHELL VIOLET and JEMAU OLIVEIRA

New Bedford District Court
No.1333CR1572, 1333CR1576

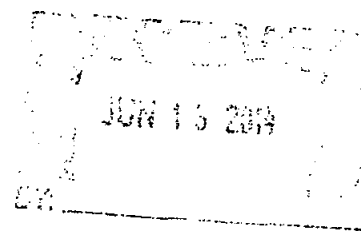
NOTICE OF DOCKET ENTRY

You are hereby notified that on June 11, 2014, the following was
entered on the docket of the above referenced case:

ORDER: Interlocutory appeal allowed; to Appeals Court. (Duffly, J.)

Maura S. Doyle, Clerk

To: David B. Mark, Assistant District Attorney
Jennifer Magaw, Esquire
Steven M. Bausman, Esquire
New Bedford Dist. Court/Criminal
Appeals Court / Comm. of Mass.



COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: SJ-2013-0501

DISTRICT COURT DEPARTMENT
NEW BEDFORD DISTRICT COURT
1333CR001572
1333CR001576

COMMONWEALTH

VS.

MITCHELL VIOLET and JEMAUL OLIVEIRA

ORDER

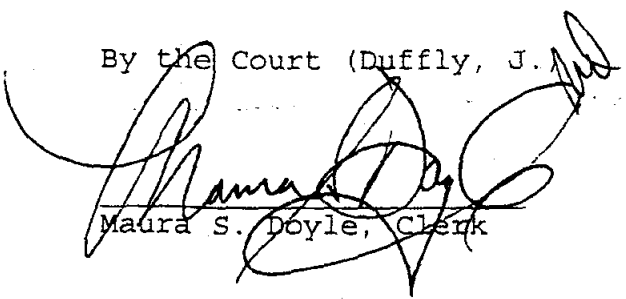
The Commonwealth seeks leave to pursue an interlocutory appeal, pursuant to Mass. R. Crim. P. 15(a)(2), of a District Court judge's allowance of a motion to suppress evidence seized during an inventory search of a vehicle owned by one of the defendants' sisters.

Upon consideration, it is ORDERED that the Commonwealth's application for leave to pursue an interlocutory appeal be, and hereby is, ALLOWED.

It is FURTHER ORDERED that the interlocutory appeal shall proceed in the Appeals Court and that the Criminal Clerk's Office of the New Bedford District Court shall assemble the records in docket nos. 1333CR001572 and 1333CR001576 and transmit the records to the Clerk's Office of the Appeals Court, John Adams Courthouse,

One Pemberton Square, Room 1-200, Boston, Massachusetts, 02108-1705.

By the Court (Duffly, J.)


Maura S. Doyle, Clerk

Entered: June 11, 2014

CRIMINAL COMPLAINT ORIGINAL		DOCKET NUMBER 1333CR001572	NO. OF COUNTS 3	Trial Court of Massachusetts District Court Department
DEFENDANT NAME & ADDRESS Jemaul R Oliveira 155 Willis Street New Bedford, MA 02740				COURT NAME & ADDRESS New Bedford District Court 75 North Sixth Street New Bedford, MA 02740 (508)999-9700
DEFENDANT DOB 10/21/1987	COMPLAINT ISSUED 03/19/2013	DATE OF OFFENSE 03/18/2013	ARREST DATE 03/18/2013	
OFFENSE CITY / TOWN Dartmouth	OFFENSE ADDRESS			NEXT EVENT DATE & TIME 03/19/2013 9:00 AM
POLICE DEPARTMENT DARTMOUTH PD	POLICE INCIDENT NUMBER 13-123-AR			NEXT SCHEDULED EVENT Arraignment
OBTN TDAR201300123				ROOM / SESSION Arraignment Session
The undersigned complainant, on behalf of the Commonwealth, on oath complains that on the date(s) indicated below the defendant committed the offense(s) listed below and on any attached pages.				

COUNT	CODE	DESCRIPTION
1	266/30A/D	SHOPLIFTING BY CONCEALING MDSE c266 §30A

On 03/18/2013 did intentionally conceal merchandise offered for sale by Kohl's Department Store, a store or other retail mercantile establishment, with the intention of depriving the merchant of the proceeds, use or benefit of such merchandise, or converting the same to the defendant's use without paying the merchant the value thereof, in violation of G.L. c.266, §30A, second par.

PENALTY: not more than \$250.

2	269/10/G	FIREARM WITHOUT FID CARD, POSSESS c269 s.10(h)
---	----------	--

On 03/18/2013 did own, possess or transfer a firearm, rifle, shotgun or ammunition without complying with the requirements relating to the firearm identification card as provided for in G.L. c.140, s.129C, in violation of G.L. c.269, s.10(h)(i)

PENALTY: jail or house of correction for not more than 2 years; or not more than \$500 fine; s.10(e): item to be ordered forfeited.

3	269/10/J	FIREARM, CARRY WITHOUT LICENSE c269 s.10(a)
---	----------	---

On 03/18/2013 did knowingly have in his or her possession, or under his or her control in a vehicle, a firearm, as defined in G.L. c.140, s.121, or a rifle or shotgun, not then being present in his or her residence or place of business, and not having in effect a license to carry firearms or otherwise being authorized by law to do so, in violation of G.L. c.269, s.10(a).

PENALTY: state prison not less than 2 1/2 years not more than 5 years; or jail or house of correction not less than 18 months or not more than 2 1/2 years; no continuance with a finding, filing, or suspended sentence, probation, parole, furlough, or sentence deduction until 18 months served; item to be ordered forfeited.

SIGNATURE OF COMPLAINANT <i>X Jorge Serrano</i>	SWORN TO BEFORE CLERK-MAGISTRATE/ASST. CLERK/DEP. ASST. CLERK <i>X</i>	DATE 3/19/13
NAME OF COMPLAINANT <i>Jorge Serrano</i>	A TRUE COPY ATTEST <i>X</i>	CLERK-MAGISTRATE/ ASST. CLERK <i>P. Brown</i>
		DATE

Notice to Defendant: 42 U.S.C. § 3796gg-4(e) requires this notice: If you are convicted of a misdemeanor crime of domestic violence you may be prohibited permanently from purchasing and/or possessing a firearm and/or ammunition pursuant to 18 U.S.C. § 922 (g) (9) and other applicable related Federal, State, or local laws.

CRIMINAL COMPLAINT ORIGINAL		DOCKET NUMBER 1333CR001791	NO. OF COUNTS 1	Trial Court of Massachusetts District Court Department	
DEFENDANT NAME & ADDRESS Jemaul R Oliveira 155 Willis Street New Bedford, MA 02740				COURT NAME & ADDRESS New Bedford District Court 75 North Sixth Street New Bedford, MA 02740 (508)999-9700	
DEFENDANT DOB 10/21/1987	COMPLAINT ISSUED 03/27/2013	DATE OF OFFENSE 03/18/2013	ARREST DATE		
OFFENSE CITY / TOWN Dartmouth		OFFENSE ADDRESS		NEXT EVENT DATE & TIME 04/17/2013 8:00 AM	
POLICE DEPARTMENT DARTMOUTH PD		POLICE INCIDENT NUMBER 13-115WA		NEXT SCHEDULED EVENT Arraignment	
OBTN				ROOM / SESSION Arraignment Session	
<p>The undersigned complainant, on behalf of the Commonwealth, on oath complains that on the date(s) indicated below the defendant committed the offense(s) listed below and on any attached pages.</p>					

COUNT	CODE	DESCRIPTION
1	269/10/EE	FIREARM, CARRY WITHOUT LICENSE LOADED c269 s.10(n)

On 03/18/2013 did knowingly have in his or her possession, or under his or her control in a vehicle, a loaded firearm or a loaded rifle or shotgun, as defined in G.L. c.140, § 121 or G.L. c.269, § 10(n), not then being present in his or her residence or place of business, and not having in effect a license to carry firearms or otherwise being authorized by law to do so, in violation of G.L. c.269, § 10(a) & (n).

(PENALTY for violation of § 10(a): state prison not less than 2½ years, not more than 5 years; or jail or house of correction not less than 18 months, not more than 2½ years; no continuance without a finding, filing, or suspended sentence; no probation, parole, work release, furlough, or sentence deduction for good conduct until 18 months served; § 10(e): firearm, rifle or shotgun to be ordered forfeited. PLUS additional sentence pursuant to § 10(n): jail or house of correction not more than 2½ years from and after expiration of sentence for violation of § 10(a).)

SIGNATURE OF COMPLAINANT <i>X [Signature]</i>	SWORN TO BEFORE CLERK/MAGISTRATE/ASST. CLERK/DEP. ASST. CLERK <i>X [Signature]</i>		DATE 4/17/13
NAME OF COMPLAINANT	A TRUE COPY ATTEST. <i>X [Signature]</i>	CLERK/MAGISTRATE/ASST. CLERK	DATE

Notice to Defendant: 42 U.S.C. § 3796gg-4(e) requires this notice: If you are convicted of a misdemeanor crime of domestic violence you may be prohibited permanently from purchasing and/or possessing a firearm and/or ammunition pursuant to 18 U.S.C. § 922 (g) (9) and other applicable related Federal, State, or local laws.

CRIMINAL COMPLAINT PROSECUTOR COPY		DOCKET NUMBER 1333CR001792	NO. OF COUNTS 1	Trial Court of Massachusetts District Court Department
DEFENDANT NAME & ADDRESS Mitchell T Violet 284 England Street Apt#2 New Bedford, MA 02745				COURT NAME & ADDRESS New Bedford District Court 75 North Sixth Street New Bedford, MA 02740 (508)999-9700
DEFENDANT DOB 04/05/1988	COMPLAINT ISSUED 03/27/2013	DATE OF OFFENSE 03/18/2013	ARREST DATE	
OFFENSE CITY / TOWN Dartmouth	OFFENSE ADDRESS			NEXT EVENT DATE & TIME 04/17/2013 8:00 AM
POLICE DEPARTMENT DARTMOUTH PD	POLICE INCIDENT NUMBER 13-116-WA			NEXT SCHEDULED EVENT Arraignment
OBTN				ROOM / SESSION Arraignment Session
<p>The undersigned complainant, on behalf of the Commonwealth, on oath complains that on the date(s) indicated below the defendant committed the offense(s) listed below and on any attached pages.</p>				

COUNT	CODE	DESCRIPTION
1	269/10/EE	FIREARM, CARRY WITHOUT LICENSE LOADED c269 s.10(n)

On 03/18/2013 did knowingly have in his or her possession, or under his or her control in a vehicle, a loaded firearm or a loaded rifle or shotgun, as defined in G.L. c.140, § 121 or G.L. c.269, §10(n), not then being present in his or her residence or place of business, and not having in effect a license to carry firearms or otherwise being authorized by law to do so, in violation of G.L. c.269, § 10(a) & (n).

(PENALTY for violation of §10(a): state prison not less than 2½ years, not more than 5 years; or jail or house of correction not less than 18 months, not more than 2½ years; no continuance without a finding, filing, or suspended sentence; no probation, parole, work release, furlough, or sentence deduction for good conduct until 18 months served; §10(e): firearm, rifle or shotgun to be ordered forfeited. PLUS additional sentence pursuant to §10(n): jail or house of correction not more than 2½ years from and after expiration of sentence for violation of §10(a).)

SIGNATURE OF COMPLAINANT X	SWORN TO BEFORE CLERK-MAGISTRATE/ASST. CLERK/DEP. ASST. CLERK X	DATE
NAME OF COMPLAINANT	CLERK-MAGISTRATE/ ASST. CLERK X	DATE

Notice to Defendant: 42 U.S.C. § 3796gg-4(e) requires this notice: If you are convicted of a misdemeanor crime of domestic violence you may be prohibited permanently from purchasing and/or possessing a firearm and/or ammunition pursuant to 18 U.S.C. § 922 (g) (9) and other applicable related Federal, State, or local laws.

ADDENDUM

ADDENDUM

Mass. General Laws, Chapter 266 § 30A

§ 30A. Shoplifting; Alteration of Price Tag; Theft of Shopping Cart.

Any person who intentionally takes possession of, carries away, transfers or causes to be carried away or transferred, any merchandise displayed, held, stored or offered for sale by any store or other retail mercantile establishment with the intention of depriving the merchant of the possession, use or benefit of such merchandise or converting the same to the use of such person without paying to the merchant the value thereof; or

any person who intentionally conceals upon his person or otherwise any merchandise offered for sale by any store or other retail mercantile establishment with the intention of depriving the merchant of proceeds, use or benefit of such merchandise or converting the same to the use of such person without paying to the merchant the value thereof; or

any person who intentionally alters, transfers or removes any label, price tag or marking indicia of value or any other markings which aid in determining value affixed to any merchandise displayed, held, stored or offered for sale by any store or other retail mercantile establishment and to attempt to purchase such merchandise personally or in consort with another at less than the full retail value with the intention of depriving the merchant of all or some part of the retail value thereof; or

any person who intentionally transfers any merchandise displayed, held, stored or offered for sale by any store or other retail mercantile establishment from the container in or on which the same shall be displayed to any other container with intent to deprive the merchant of all or some part of the retail value thereof; or

any person who intentionally records a value for the merchandise which is less than the actual retail value with the intention of depriving the merchant of the full retail value thereof; or

any person who intentionally removes a shopping cart from the premises of a store or other retail mercantile establishment, without the consent of the merchant given at the time of such removal, with the intention of permanently depriving the merchant of the possession, use or benefit of such cart; and

where the retail value of the goods obtained is less than one hundred dollars, shall be punished for a first offense by a fine not to exceed two hundred and fifty dollars, for a second offense by a fine of not less than one hundred nor more than five hundred dollars and for a third or subsequent offense by a fine of not more than five hundred dollars or imprisonment in a jail for not more than two years, or by

both such fine and imprisonment. Where the retail value of the goods obtained equals or exceeds one hundred dollars, any violation of this section shall be punished by a fine of not more than one thousand dollars or by imprisonment in the house of correction for not more than two and one-half years, or by both such fine and imprisonment.

If the retail value of the goods obtained is less than one hundred dollars, this section shall apply to the exclusion of section thirty.

Law enforcement officers may arrest without warrant any person he has probable cause for believing has committed the offense of shoplifting as defined in this section. The statement of a merchant or his employee or agent that a person has violated a provision of this section shall constitute probable cause for arrest by any law enforcement officer authorized to make an arrest in such jurisdiction.

Mass. General Laws, Chapter 269 § 10(a)

10. Weapons -- Dangerous Weapons -- Unlawfully Carrying.

(a) Whoever, except as provided or exempted by statute, knowingly has in his possession; or knowingly has under his control in a vehicle; a firearm, loaded or unloaded, as defined in section one hundred and twenty-one of chapter one hundred and forty without either:

- (1) being present in or on his residence or place of business; or**
- (2) having in effect a license to carry firearms issued under section one hundred and thirty-one of chapter one hundred and forty; or**
- (3) having in effect a license to carry firearms issued under section one hundred and thirty-one F of chapter one hundred and forty; or**
- (4) having complied with the provisions of sections one hundred and twenty-nine C and one hundred and thirty-one G of chapter one hundred and forty; or**
- (5) having complied as to possession of an air rifle or BB gun with the requirements imposed by section twelve B; and whoever knowingly has in his possession; or knowingly has under control in a vehicle; a rifle or shotgun, loaded or unloaded, without either:**
 - (1) being present in or on his residence or place of business; or**
 - (2) having in effect a license to carry firearms issued under section one hundred and thirty-one of chapter one hundred and forty; or**
 - (3) having in effect a license to carry firearms issued under section one hundred and thirty-one F of chapter one hundred and forty; or**

(4) having in effect a firearms identification card issued under section one hundred and twenty-nine B of chapter one hundred and forty; or

(5) having complied with the requirements imposed by section one hundred and twenty-nine C of chapter one hundred and forty upon ownership or possession of rifles and shotguns; or

(6) having complied as to possession of an air rifle or BB gun with the requirements imposed by section twelve B; shall be punished by imprisonment in the state prison for not less than two and one-half years nor more than five years, or for not less than 18 months nor more than two and one-half years in a jail or house of correction. The sentence imposed on such person shall not be reduced to less than 18 months, nor suspended, nor shall any person convicted under this subsection be eligible for probation, parole, work release, or furlough or receive any deduction from his sentence for good conduct until he shall have served 18 months of such sentence; provided, however, that the commissioner of correction may on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, grant to an offender committed under this subsection a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; or to obtain emergency medical or psychiatric service unavailable at said institution. Prosecutions commenced under this subsection shall neither be continued without a finding nor placed on file.

No person having in effect a license to carry firearms for any purpose, issued under section one hundred and thirty-one or section one hundred and thirty-one F of chapter one hundred and forty shall be deemed to be in violation of this section.

The provisions of section eighty-seven of chapter two hundred and seventy-six shall not apply to any person 18 years of age or older, charged with a violation of this subsection, or to any child between ages fourteen and 18 so charged, if the court is of the opinion that the interests of the public require that he should be tried as an adult for such offense instead of being dealt with as a child.

The provisions of this subsection shall not affect the licensing requirements of section one hundred and twenty-nine C of chapter one hundred and forty which require every person not otherwise duly licensed or exempted to have been issued a firearms identification card in order to possess a firearm, rifle or shotgun in his residence or place of business.